



# 1854 Treaty Authority

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P.O. Box 10940  
Pittsburgh, PA 15236-0940

Bill Storm  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place, Suite 500  
St. Paul, MN 55101-2198

RE: Mesaba Energy Project Draft EIS

Dear Mr. Hargis and Mr. Storm,

The purpose of this letter is to provide comment on draft Environmental Impact Statement (EIS) for the Mesaba Energy Project.

The 1854 Authority is an inter-tribal natural resource management organization governed by the Bois Forte Band and Grand Portage Band of Lake Superior Chippewa, both federally recognized tribes. The organization manages the off-reservation treaty rights of these bands in the 1854 Ceded Territory. Please note that these comments are submitted by 1854 Treaty Authority staff with the understanding that member reservations may submit comments from their own perspective.

Band members continue to exercise rights to hunt, fish, and gather guaranteed under treaty with the United States. Resources must be available and safe to utilize for the exercise of these rights. While we are not opposed to pursuing energy and economic development opportunities, we believe that such development should only proceed when all safeguards to protect the environment are ensured. Industrial operations should avoid or minimize negative impacts to the natural resources and utilization of these resources. Our focus is on projects within or affecting resources of the 1854 Ceded Territory which encompasses all of Lake and Cook counties, most of St. Louis and Carlton counties, and portions of Pine and Aitkin counties in northeastern Minnesota.

## Carbon Capture and Sequestration

Annual emissions from the Mesaba Energy project include over 10 million tons of carbon dioxide per year. The draft EIS states that carbon capture and sequestration (CCS) is not currently feasible for the project. The plant will be designed so it can be modified to capture carbon dioxide in the future if reductions are required by regulation or encouraged by economic incentives. Two primary options exist for such capture. Current available technology would result in an approximately 30% reduction in carbon dioxide emissions. The other potential option would require piping the carbon dioxide to sequestration sites in North Dakota or

Manitoba, hundreds of miles away. A specific and detailed design for carbon capture, transport, or sequestration has not been developed.

It is our understanding that one value of innovative power generation is reduced emissions. However, proposed releases of carbon dioxide from this project appear inconsistent with efforts to reduce releases of greenhouse gases. Carbon dioxide emissions have a significant impact on global climate and are the primary driving force behind increases in global temperature. Regionally, we are beginning to see or have seen the effects of climate change including impacts to plant and animal species. We are highly concerned about climate change and its effects on natural resources and related treaty rights in the region, and the project as planned contributes to the problem. The issue of carbon capture and sequestration should not be avoided, and should be built into the project up front.

#### Regional Haze and Visibility

Modeling results indicate that visibility impacts are significant for class I areas including the Boundary Waters Canoe Area Wilderness and Voyageurs National Park. Impacts from the East Range Site are substantially higher than the West Range Site. Much of the explanation and justification for visibility impacts appear to center on seasonal or weather events (winter, clouds, fog, precipitation) and potential future reductions from other power producers in the region. This approach seems flawed. Further, it is our understanding that agreement has not been reached over completion of the Best Available Control Technology (BACT) analysis for the project. A determination on what constitutes BACT for sulfur dioxide and nitrogen oxide emissions must be made, and mitigation plans to offset any impact should then be developed. We have concerns over haze and visibility issues, and support the Minnesota Pollution Control Agency position and issues raised by federal land managers outlined late in 2007.

#### Mercury

Emissions from the project include up to about 54 pounds of mercury per year. As a new source, the project is inconsistent with Minnesota's total maximum daily load (TMDL) goal of reductions in mercury releases. With a statewide goal to reduce anthropogenic sources of mercury by 93% from 1990 levels to annual emissions of 789 pounds per year, an increase of 54 pounds per year is significant. Additionally, the preferred project location is in the vicinity of Minnesota Steel which is also projected to emit mercury. We question how permitting would be handled for yet another facility that increases mercury releases.

Of primary concern to us is mercury in fish, and ultimately potential human health effects. Tribal members can be an at risk population due to increased levels of fish consumption. A human health risk assessment to estimate risk to subsistence fishers was conducted and referenced in the draft EIS. Results indicated an incremental increase in health risks from ingestion of fish due to mercury from plant emissions. Although the document states that such a risk would be within the acceptable risk quotient, uncertainty exists (especially impacts to local waters where "hotspots" may exist) and we are concerned about any increase to mercury contamination of fish.

#### Water Quality

Water discharges would primarily consist of cooling tower blowdown blended with additional wastewater from other plant systems. Constituents in the discharge would essentially be the same as those in the water supply but more concentrated as a result of repeated cycles through the process. The number of cycles of concentration would be determined by mercury concentrations and conditions of NPDES permits. More stringent requirements would be



required on the East Range Site to comply with regulations for discharges within the Lake Superior Basin (mercury in particular). Anticipated discharges are expected to exceed water quality standards for hardness, total dissolved solids, sulfate, and conductivity. Evidence suggests that sulfate may contribute to the methylation of mercury and thus be a factor in fish contamination issues. The draft EIS states that Excelsior would have to apply for a waiver if parameters are expected to exceed water quality standards. We have concern over this type of approach and question if it is even allowable under water quality regulations. Water quality standards must be met, and in a situation of a variance, a specific plan and timeline to meet standards must be developed. Variances are time-limited and can only be allowed when the standard can ultimately be attained.

#### Cumulative Impacts and Site Location

A considerable number of projects exist, are under development, or are proposed in the region. While we are supportive of economic development, we want to ensure that the environment and natural resources (and related treaty rights that rely on those resources) are properly protected. The cumulative impact from all industrial projects is a vital issue that must be addressed. Results from analysis of the East Range Site indicated that the hazard/cancer risk would exceed Minnesota Department of Health standards in an overlapping area with other mining projects. This is of concern, and cumulative impacts to the resources (air, water, wetlands, fisheries, wildlife, etc.) must be clearly understood and identified.

In our review of the project, we primarily focused on the preferred West Range Site. Analysis in the draft EIS also generally focused on this site and related impacts, and in many cases didn't include as detailed information on the alternative East Range Site. Environmental impacts are among reasons for preferring the West Range Site including available water supply, greater distance from class I air areas, and location outside of the Lake Superior Basin. Cumulative impacts at the East Range Site (St. Louis River watershed, along with the Partridge River and Embarrass River watersheds) are potentially high due to the number of current or proposed projects directly adjacent to the site. We are concerned about a potential "bait and switch" approach, under which the East Range Site would suddenly become the preferred location. In that case, we would ask for additional information in the EIS and an opportunity to further evaluate impacts to the environment.

#### Cultural Resources

The potential for negative impacts to cultural resources is of concern to the bands. Existing sources of information about the project area have been adequately reviewed for the location of known heritage sites within the project area. The bands support further project specific Phase I surveys within the project area to identify heritage sites. Access roads, transmission lines, and rail lines all have the potential to negatively affect heritage sites both through direct disturbance and indirectly by providing access to these areas for looting. In addition to the historic resources in the project area, areas that may contain traditional importance and use need to be identified through consultation with band members. Because the project is a federal undertaking, consultation is required under the National Historic Preservation Act. Further and ongoing consultation with tribes should occur on cultural resource issues as additional survey work is planned and implemented.

#### Project Need

The project has been exempted from demonstrating need because it has qualified as an "innovative energy project" under Minnesota statute. The EIS states that issues such as need, size, or type of facility are excluded from the scope of the process. However, we find it difficult

to accept such a determination when considering potential impacts to the resources. While we support the exploration of innovative technologies, this should not be the overriding justification for a project. In addition to the environmental concerns outlined above, it is our understanding that significant issues exist with rulings from the Minnesota Public Utilities Commission and lack of power purchase agreements. Furthermore, estimates of economic impact and the number of jobs to be provided seem to be declining or are unclear at best. Along with our concerns over environmental impacts, we question if there is a need for this project or if it is the right fit for our region, and believe it is an issue that must be addressed.

Sovereignty and Treaty Rights

Finally, I remind you that both the federal and state governments have the responsibility to work with Indian bands on a government-to-government basis. Tribes are sovereign governments, and must be treated as such. Notification and consultation activities must be completed directly with all tribes potentially affected by the proposed project. The planning process and project implementation must recognize the sovereign status of bands and the rights retained by treaty with the United States. This must be put into practice, and also needs to be more clearly addressed in the draft EIS. Possible locations include section 3.8 to include that treaty rights and tribal management also exist; section 3.9.4 to include that the East Range Site is within the 1854 Ceded Territory where treaty rights exist; section 3.17.4.1 to include tribal uses as a sensitive receptor; and chapter 6 to include that the Treaty of 1854 also retained rights to hunt, fish, and gather in the 1854 Ceded Territory.

The 1854 Treaty Authority would like to remain informed on this project if or when the process moves forward. Thank you.

Sincerely,



Darren Vogt  
Environmental Director



Dave Woodward  
Cultural Resource Specialist

cc: Corey Strong, Bois Forte Department of Natural Resources  
Curtis Gagnon, Grand Portage Trust Lands and Resources